

**LAW OFFICES OF
DONALD BARTLETT SMITH
7800 PERRY HWY.
PITTSBURGH, PA 15237**

(412) 630-9742



**ENTERED
Office of Proceedings**

MAR 6 - 2008

**Part of
Public Record**

March 4, 2008

**Surface Transportation Board
Secretary, Vernon A Williams
395 East Street, SW
Washington, DC 20042**

221776 - 221777

**Re. Docket Nos FD-35082 and AB-88 (SUB NO 5X) Request of Victor Wheeler, et al ,
for Oral Hearing/Argument and for Expedited Consideration**

Dear Mr. Williams

Please find enclosed the Requests of Petitioners' and Respondents' respectively, for Oral Hearing and Expedited Consideration in the above captioned matters All parties have requested that these two related cases be considered simultaneously

If you have any questions concerning this matter, please contact me at (412) 630-9742 Thank you for your attention

Sincerely,

**Donald Bartlett Smith
Attorney for Petitioners/Respondents**



BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NOS. FD-35082 AND AB-88 (SUB NO. 5X)

221776

221777

ABANDONMENT EXEMPTION - IN ERIE COUNTY, PENNSYLVANIA

PETITION OF VICTOR WHEELER, ET AL., FOR DECLARATORY JUDGMENT

AND,

**JOINT MOTION OF THE NORTHWEST PENNSYLVANIA TRAIL ASSOCIATION
AND MATERIAL RECOVERY OF ERIE, INC., FOR THE SUBSTITUTION OF NEW
INTERIM TRAIL USER.**

REQUEST OF VICTOR WHEELER, ET AL, FOR ORAL HEARING/ARGUMENT

ENTERED
Office of Proceedings

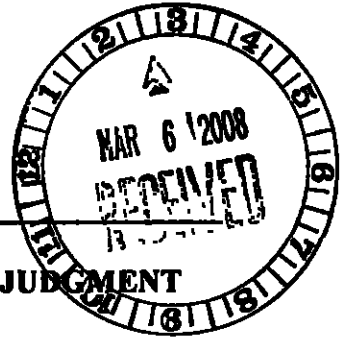
MAR 6 - 2008

Pert of
Public Record

Filed by.

Attorney Donald Bartlett Smith
7800 Perry Hwy
Pittsburgh, PA 15237
(412) 630-9742

BEFORE THE SURFACE TRANSPORTATION BOARD



PETITION OF VICTOR WHEELER, ET AL., FOR DECLARATORY JUDGMENT

AND,

**JOINT MOTION OF THE NORTHWEST PENNSYLVANIA TRAIL ASSOCIATION
AND MATERIAL RECOVERY OF ERIE, INC., FOR THE SUBSTITUTION OF NEW
INTERIM TRAIL USER.**

REQUEST OF VICTOR WHEELER, ET AL, FOR ORAL HEARING/ARGUMENT

1 Petitioners, Victor Wheeler and Sandra J Wheeler, James K. Sisson and Nancy A Sisson; Bruce D Redfield III, and Tamera J Redfield, and David A Warner and Tina M Warner, adult residents of the state of Pennsylvania, respectfully request the Surface Transportation Board ("Board"), for Oral Hearing/Argument in Docket Nos FD-35082, and AB-88 (SUB NO 5X), that all named parties have petitioned the Board to consider concurrently

2 The issues raised the above cases present complex matters of both state and federal law. The circumstances from which the facts are derived relate to one current, and several prior actions, before both the Board and the Federal Courts. The documentation and evidence within the possession and knowledge of the Petitioners, and alleged to a greater though not exhaustive degree of specificity in the Complaint before the Federal Court, greatly exceeds that which it was practical to detail in the Petitioners' Petition in the first action and their Response in the second. In neither case before the Board, do the parties agree about the facts, although the Federal Courts refusal to dismiss or rule against Victor Wheeler, et al.'s claims and the Court's referral of the same to the Board, tends to support their allegations. Finally, some of the issues presented to the Board for Decision appear to present matters of first impression for the Board. Petitioners believe

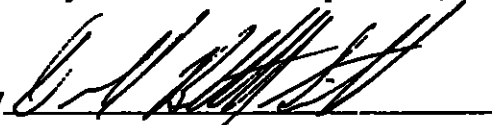
for these reasons that the arguments provided in the parties' written filings will be incomplete if Petitioners are not provided an opportunity to supplement the record and advocate their positions in an oral hearing

CONCLUSION

For the foregoing reasons, Victor Wheeler, et al , Petitioners and Respondents, in the respective actions now before the Board, hereby request an Oral Hearing/Oral Argument in the above captioned matters

Dated this 4 day of March, 2008

Respectfully Submitted,
Donald Bartlett Smith
Attorney for Petitioners/Respondents,

By 

Donald Bartlett Smith, Esq

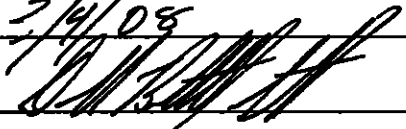
VERIFICATION

I, Donald Bartlett Smith, declare under penalty of perjury that the foregoing is true and correct Further, I certify that I am qualified and authorized to file this pleading Executed on March 4, 2008

A handwritten signature in black ink, appearing to read "Donald Bartlett Smith", is written over a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify that I have served all parties of record in this proceeding with this document by United States mail

2/4/08


Canadian National Railroad Company
935 de La Gauchetiere Street West
Montreal, Quebec
B3B 2M9

Robert N Gentile
General Counsel & Secretary
Bessemer and Lake Erie Railroad Company
P O Box 68
135 Jamison Lane
Monroeville, PA 15146

William T. Morton, Esq
4934 Peach St
Erie, PA 16509

Thomas J Healey
17641 S Ashland Avenue
Homewood, IL 60430-1339

Timothy M Zieziula, Esq.
Knox McLaughlin Gornall & Sennett PC
120 West Tenth Street
Erie, PA 16501-1461